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DEPARTMENT OF AGRICULTURE

2 CFR Parts 400, 415, 416, 418, and 422

Office of the Chief Financial Officer

7 CFR Parts 3015, 3016, 3018, 3019, 3022, and 3052

Farm Service Agency

7 CFR Parts 761 and 785

Commodity Credit Corporation

7 CFR Parts 1407 and 1485

National Institute of Food and Agriculture

7 CFR Parts 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, and 3431

Rural Utilities Service

7 CFR Parts 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1774, 1775, 1776, 1778, 1779, 1780, 1782, and 1783

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1942, 1944, 1951, and 1980

Rural Housing Service

7 CFR Parts 3570 and 3575

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4274, 4279, 4280, 4284, 4285 and 4290

RIN 0505-AA15

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Office of the Chief Financial Officer, Farm Service Agency, Commodity Credit Corporation, National Institute of Food and Agriculture, Rural Utilities Service, Rural Business-Cooperative Service, Rural Housing Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Office of the Chief Financial Officer, Farm Service Agency, Commodity Credit Corporation, National Institute of Food and Agriculture, Rural Utilities Service, Rural Business-Cooperative Service and Rural Housing Service finalize their portion of the uniform federal assistance rule and amend specific regulations to reference the conforming changes published by the Office of Management and Budget (OMB) in the Federal Register on December 19, 2014.

DATES: This rule is effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tyson Whitney, Office of the Chief Financial Officer, Director, Transparency and Accountability Reporting Division, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250-9011, 202-720-8978, tyson.whitney@cfo.usda.gov.

SUPPLEMENTARY INFORMATION: OMB is streamlining the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. In a final rule published in the Federal Register on December 26, 2013, (78 FR 78590) OMB adopted final guidance, Uniform

Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), that supersedes and streamlines requirements from OMB Circulars A-21, A-87, A-110, and A-122 (which were located previously in title 2 of the Code of Federal Regulation (CFR)); Circulars A-89, A-102, and A-133; and the guidance in Circular A-50 on Single Audit Act follow-up. The final guidance is located in title 2 part 200.

On December 19, 2014, OMB published a joint interim final rule in the Federal Register, (79 FR 75871). OMB made technical corrections to the Uniform Guidance, and Federal awarding agencies, including the Department of Agriculture, Office of the Chief Financial Officer, Farm Service Agency, Commodity Credit Corporation, National Institute of Food and Agriculture, Rural Utilities Service, Rural Business-Cooperative Service and Rural Housing Service, implemented the guidance in their respective chapters and titles in the CFR.

OMB's joint interim final rule requested additional comments on the rule. USDA received 13 comments. Of the 13 comments, one comment was directly related to USDA, Rural Housing Service (RHS). RHS will address this comment below as part of the preamble to 7 CFR 1944.422 of this final rule. The remaining comments were applicable to OMB and other Federal agencies. Notification was sent to OMB for resolution.

As part of the December 2014 rulemaking, the Office of the Chief Financial Officer adopted 2 CFR part 200, along with an agency-specific addendum in a new 2 CFR part 400. The Department of Agriculture added 2 CFR parts 415, 416, 418 and 422. In addition, the Office of the Chief Financial Officer removed parts 3015, 3016, 3018,

3019, 3022 and 3052 from title 7 of the CFR, as they became obsolete with the publication of the interim final rule. See 79 FR 75981, December 19, 2014. Title 2 of the CFR parts 400, 415, 416, 418 and 422 as described in the interim final rule are adopted with no changes.

The Farm Service Agency 7 CFR parts 761 and 785, and Commodity Credit Corporation 7 CFR parts 1407 and 1485 as described in the interim final rule are adopted with no changes.

The National Institute of Food and Agriculture 7 CFR parts 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, and 3431 as described in the interim final rule are adopted with no changes.

The Rural Utilities Service 7 CFR parts 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1779, and 1782 as described in the interim final rule are adopted with no changes. The changes to 7 CFR parts 1774, 1775, 1776, 1778, 1780, and 1783 as described in the interim final rule are adopted with technical changes to address the following issues. First, there were specific new regulations (including 2 CFR parts 200, 400, or other 400 series regulations) that should have had been referenced in the conforming changes published in the December 19, 2014, rule, but which were inadvertently not included. An example is that the Emergency and Imminent Community Water Assistance Grants regulations (7 CFR part 1778) should have had a conforming change reference to 2 CFR parts 200 and 400. Second, there were some streamlining measures implemented by OMB that might be interpreted by some as not applicable to 7 CFR part 1780 without the technical corrections. Examples include the change from \$100,000 to \$150,000 for the Simplified Acquisition Threshold for small purchase

procedures, an increase in the associated threshold for the use of construction surety bonds, the addition of micro-purchases, and changes to contract clauses. Current language at 7 CFR 1780.72(a) states that small purchase procedures are applicable to procurement under \$100,000 rather than referencing the Simplified Acquisition Threshold. The technical corrections would enable the use of the OMB streamlining measures. A standard contract clause that had been in 7 CFR 3016.36 requiring compliance with state energy plans was removed by OMB and should also be removed from 7 CFR 1780.75.

The Rural Housing Service, Rural Business-Cooperatives Service, Rural Utilities Service and Farm Service Agency 7 CFR parts 1942, 1951, and 1980 as described in the interim final rule are adopted with no changes. The regulation in 7 CFR part 1944 as described in the interim final rule is adopted with a technical change to 7 CFR 1944.422 in response to the following comment:

Comment: It appears that the USDA Rural Development requirement for an audit to be submitted within 90 days of the end of the grantee's fiscal year (§1944.422) has not been brought in line with the overall deadline for audits contained in §200.512(a)(1). It is almost impossible for USDA funded affordable housing NFE's to complete the audit process and have even a draft Single Audit report within 90 days of the end of their fiscal year. Many of these organizations have related LLC's for which they are general partners and they must wait for the completion of those related entities' audit before completing the overall organization's audit. Why was this unreasonable audit deadline not reviewed or revised with the publication of the interim rule?

Response: USDA Rural Development agrees the regulation must be clear and

consistent. The omission of language in 7 CFR 1944.422 was an oversight. We amended 7 CFR 1944.422 to address the oversight.

The Rural Housing Service 7 CFR parts 3570 and 3575 as described in the interim final rule are adopted with no changes.

The Rural Business-Cooperative Service and Rural Utilities Service 7 CFR parts 4274, 4279, 4280, 4284, 4285, and 4290 as described in the interim final rule are adopted with no changes.

Because the changes identified in the preamble are merely technical, advance notice and public comment are unnecessary and we find good cause to make these necessary changes effective immediately upon publication.

Regulatory Analysis

For the regulatory analysis regarding this rulemaking, please refer to the analysis prepared by OMB in the interim final rule, which is incorporated herein. See 79 FR 75876, December 19, 2014.

Executive Order 12866 Determination

Pursuant to Executive Order 12866, OMB has determined this final rule to be not significant. OMB has not reviewed this rule.

List of Subjects

2 CFR Parts 400, 415, 416, 418, and 422; 7 CFR Parts 761, 785, 1407, 1485, 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1774, 1775, 1776, 1778, 1779,

1780, 1782, 1783, 1942, 1944, 1951, 1980, 3015, 3016, 3018, 3019, 3022, 3052, 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, 3431, 3570, 3575, 4274, 4279, 4280, 4284, 4285, and 4290

Accounting, Administrative practice and procedure, Agriculture, Auditing, Business and industry, Colleges and universities, Community development, Cost principles, Economic development, Government Contracts, Grants administration, Grant programs, Grant programs housing and community development, Hospitals, Indians, Loan programs – agriculture, Nonprofit organizations, State and local governments, Reporting and recordkeeping requirements, Research misconduct, Rural areas.

For the reasons discussed above, the interim rule adding 2 CFR parts 400, 415, 416, 418, and 422, removing 7 CFR parts 3015, 3016, 3018, 3019, 3022, and 3052, and amending 7 CFR parts 761, 785, 1407, 1485, 1703, 1709, 1710, 1717, 1724, 1726, 1737, 1738, 1739, 1740, 1773, 1774, 1775, 1776, 1778, 1779, 1780, 1782, 1783, 1942, 1944, 1951, 1980, 3400, 3401, 3402, 3403, 3405, 3406, 3407, 3415, 3430, 3431, 3570, 3575, 4274, 4279, 4280, 4284, 4285, and 4290, which was published at 79 FR 75871 on December 19, 2014, is adopted as a final rule with the following changes:

Title 7 -- Agriculture

PART 1774 – SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

1. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C).

Subpart A – General Provisions

2. Amend § 1774.8 by revising paragraphs (g) through (j) and adding paragraph (k) to read as follows:

§ 1774.8 Other Federal Statutes.

* * * * *

(g) 2 CFR part 415 – General Program Administrative Requirements.

(h) 2 CFR part 180, as adopted by USDA through 2 CFR part 417,

Nonprocurement Debarment and Suspension, implementation of Executive Order 12549 on debarment and suspension.

(i) 2 CFR part 418, New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(j) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance), implementing the Drug-Free Workplace Act of 1988 (41 U.S.C 8102).

(k) 7 CFR part 15b, USDA implementation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, prohibiting discrimination on the basis of physical or mental handicap in Federally assisted programs.

PART 1775 –TECHNICAL ASSISTANCE GRANTS

3. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A – General Provisions

4. Amend § 1775.8 by adding paragraphs (g) and (k) to read as follows:

§ 1775.8 Other Federal statutes.

* * * * *

(g) 2 CFR part 415 – General Program Administrative Requirements.

* * * * *

(k) 2 CFR part 200, subpart F – Audit Requirements.

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PART 1776 –HOUSEHOLD WATER WELL SYSTEM GRANT PROGRAM

5. The authority citation for part 1776 continues to read as follows:

Authority: 7 U.S.C. 1926e.

Subpart A – General

6. Revise § 1776.2 to read as follows:

§ 1776.2 Uniform Federal Assistance Provisions.

(a) This program is subject to the general provisions that apply to all grants made by USDA and that are set forth in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as adopted by USDA through 2 CFR part 400, as well as the following:

(1) 2 CFR part 415 – General Program Administrative Requirements.

(2) 2 CFR part 180, as adopted by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementing Executive Order 12549 on debarment and suspension.

(3) 2 CFR part 418, New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

(4) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance), implementing the Drug-Free Workplace Act of 1988 (41 U.S.C 8102).

(b) [Reserved]

PART 1778 –EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS

7. The authority citation for part 1778 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

8. Amend § 1778.14 by revising paragraph (e) and adding paragraphs (g) through (i) to read as follows:

§ 1778.14 Other considerations.

* * * * *

(e) Governmentwide debarment and suspension (nonprocurement). All projects must comply with the requirements of 2 CFR part 180, as adopted by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementing Executive Order 12549 on debarment and suspension.

* * * * *

(g) Uniform administrative requirements. All projects funded under this part are subject to 2 CFR part 200, as adopted by USDA through 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and 2 CFR part 415, General Program Administrative Requirements.

(h) Restrictions on lobbying. All projects funded under this part are subject to 2 CFR part 418, New Restrictions on Lobbying.

(i) Requirements for drug-free workplace. This program is subject to 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance).

PART 1780 –WATER AND WASTE LOANS AND GRANTS

9. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A – General Policies and Requirements

10. Amend § 1780.1 as follows:

- a. Revise paragraph (l)(3);
- b. Remove paragraphs (l)(4) and (5); and
- c. Revise paragraph (m).

The revisions read as follows:

§ 1780.1 General.

* * * * *

(1) * * *

(3) 2 CFR part 421-Requirements for Drug-Free Workplace (Financial Assistance).

* * * * *

(m) Applicants for loan or grant assistance will be required to comply with the following requirements as applicable:

(1) 2 CFR part 200, subpart F, “Audit Requirements.”

(2) 2 CFR part 180, as adopted by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementation of Executive Order 12549 and Executive Order 12689 on debarment and suspension.

(3) 2 CFR part 418, New Restrictions on Lobbying.

11. Amend § 1780.3 by adding, in alphabetical order, the definition for “Simplified acquisition threshold” to read as follows:

§ 1780.3 Definitions and grammatical rules of construction.

(a) * * *

* * * *

Simplified acquisition threshold means the dollar amount below which an applicant or owner may purchase property or services using small purchase methods as defined further at 2 CFR 200.88.

* * * *

Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections

12. Amend § 1780.72 by revising the introductory text to read as follows:

§ 1780.72 Procurement methods.

Procurement shall be made by one of the following methods and in accordance with requirements of 2 CFR 200.320: micro-purchases, procurement by small purchase procedures, procurement by sealed bids (formal advertising), procurement by competitive proposals, or procurement by noncompetitive proposals. The sealed bid method is the preferred method for procuring construction.

* * * *

13. Amend § 1780.75 as follows:

- a. In paragraph (a), remove “Contracts other than small purchases” and add “Contracts for more than the Simplified Acquisition Threshold” in its place;
- b. In paragraph (c), remove “exceeding \$100,000,” and add “exceeding the Simplified Acquisition Threshold,” in its place;
- c. Remove and reserve paragraphs (f) and (g);

- d. Revise paragraph (k); and
- e. Add paragraphs (l) through (o).

The revision and additions reads as follows:

§ 1780.75 Contract provisions.

* * * * *

(k) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1388). Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(l) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are

unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market.

(m) Debarment and suspension. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180, as supplemented by 2 CFR part 417, "Debarment and Suspension." SAM exclusion records contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(n) Byrd anti-lobbying amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(o) Procurement of recovered materials. A public body, such as a state government, state agency, municipality, county, district, authority, or other political subdivision of a state, territory or commonwealth, must ensure its contracts include provisions requiring compliance with section 6002 of the Solid Waste Disposal Act, as

amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**PART 1783 –REVOLVING FUNDS FOR FUNDING WATER AND
WASTEWATER PROJECTS (REVOLVING FUND PROGRAM)**

14. The authority citation for part 1783 continues to read as follows:

Authority: 7 U.S.C. 1926 (a)(2)(B).

Subpart A—General

15. Amend § 1783.2 by adding paragraphs (c), (d), and (e) to read as follows:

§ 1783.2 What Uniform Federal Assistance Provisions apply to the Revolving Fund Program?

* * * * *

(c) 2 CFR part 180, as adopted by USDA through 2 CFR part 417, Nonprocurement Debarment and Suspension, implementing Executive Order 12549 and Executive Order 12689 on debarment and suspension.

(d) This program is subject to 2 CFR part 418, New Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in

connection with the making of any Federal grant and other Federal contracting and financial transactions.

(e) This program is subject to 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance), implementing the Drug-Free Workplace Act of 1988 (41 U.S.C. 8102).

PART 1944 – HOUSING

16. The authority for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart I – Self-Help Technical Assistance Grants

§ 1944.422 [Amended]

17. Amend § 1944.422 in the introductory text by removing “within 90 days of the end of the grantee’s fiscal year, grant period, or termination of the grant.” and adding “the earlier of 30 calendar days after receipt of the auditor’s report or nine months after the end of the grantee’s audit period.” in its place.

Signed:

Jon M. Holladay,
Chief Financial Officer.

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